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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

Federal Trade Commission et al.,

Plaintiffs,

v.

Kroger Company et al.,

Defendants.

Case No. 3:24-cv-00347-AN

**UNOPPOSED MOTION FOR
LEAVE TO APPEAR AS *AMICUS
CURIAE***

LR 7-1 CERTIFICATION

Pursuant to Local Rule 7-1, undersigned counsel certifies that they conferred in good faith with all parties on the relief sought herein. No party opposes the motion.

MOTION

United States Representative Pramila Jayapal, on behalf of 28 Members of Congress, respectfully moves this Court for leave to file the accompanying brief as *amici curiae* in support of the motion for preliminary injunction filed by the Federal Trade Commission and the States of Arizona, California, Illinois, Maryland, Nevada, New Mexico, Oregon, and Wyoming and the District of Columbia, by and through their respective Attorneys General (collectively, “Plaintiffs”). *Amici* are 28 Members of Congress—4 Senators and 24 Members of the House of Representatives—representing 16 states. (See Appendix A for list of proposed *amici*.) For the reasons described below, the proposed *amicus* brief contains relevant material that may aid the Court in resolving the issues raised by Plaintiffs’ motion.

MEMORANDUM

This case involves a challenge to a proposed transaction between Kroger and Albertsons pursuant to Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Kroger’s proposed acquisition of Albertsons could cause significant harm to competition, consumers, and workers. The proposed merger and the outcome of the pending motion for injunctive relief will have a substantial effect on *amici*’s constituents and strongly implicates the public interest.

A federal district court has the inherent authority to allow participation by *amicus curiae* to assist the court in its proceedings. Hoptowit v. Ray, 682 F.2d 1237, 1260 (9th Cir. 1982) (overruled on other grounds) (“The district court has broad discretion to appoint *amici curiae*.”).

Indeed, “[d]istrict courts frequently welcome amicus briefs from nonparties concerning legal issues that have potential ramifications beyond the parties directly involved or if the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” NGV Gaming, Ltd. v. Upstream Point Molate, LLC, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (internal quotation marks and citations omitted); see also Hoptowit 682 F.2d at 1260.

As Members of Congress, *amici* are uniquely positioned to inform the Court about the impact that Kroger’s proposed merger with Albertsons will have on their communities. *Amici* have received thousands of constituent communications expressing concerns about this merger in the form of emails, calls, letters, and in person at town halls. *Amici*’s familiarity and frequent interactions with the communities they represent offer valuable perspective and insight as to the needs, concerns, and priorities of their constituents. *Amici* are also well positioned to discuss the negative effects of previous supermarket mergers in their states and districts.

Furthermore, several *amici* have special expertise and knowledge of antitrust law and policy. Congresswoman Jayapal has been a leader on these issues, having served as a member of the House Judiciary Committee Subcommittee on the Administrative State, Regulatory Reform, and Antitrust since 2017, and Vice Chair of the Subcommittee in the 117th Congress. Subcommittee membership entails gaining expertise on the history, purpose, and intent of U.S. antitrust law, investigating alleged anticompetitive mergers and conduct throughout the economy, engaging in oversight of antitrust enforcement agencies, and developing legislation to improve and encourage robust enforcement of our antitrust laws. Representatives Balint, Johnson, and Lieu are also members of the Subcommittee, and Representative Nadler has worked on antitrust issues as Chair and Ranking Member of the House Judiciary Committee

since the 115th Congress.

Representative Schakowsky served as Chair of the Consumer Protection Subcommittee on the Energy and Commerce Committee in previous sessions of Congress; in that position, Representative Schakowsky led efforts to protect consumers from unfair business practices. Senator Wyden is Chair of the Senate Finance Committee. And Senator Cantwell chairs the Senate Committee on Commerce, Science, and Transportation, which has jurisdiction over the Federal Trade Commission (the “FTC” or “Commission”) and other matters of interstate commerce.

Several *amici* also have special expertise with labor issues, including Representative Jayapal, who is a member of the Education and Labor Committee. Representatives Jayapal, Balint, Blunt Rochester, Budzinski, Bush, Casar, García, Hoyle, Johnson, Lee, Lieu, Ocasio-Cortez, Porter, Schakowsky, Schiff, Tlaib, Watson Coleman, and Williams are all members of the House Labor Caucus. These members have particular knowledge and expertise on labor law and policy.

Amici curiae submit this brief to provide the Court with the benefit of their experience and expertise, and to provide information that otherwise may not be brought to the Court’s attention by the parties to this case. For the reasons explained above, they respectfully request that the Court grant *amici curiae* leave to file the attached brief in support of Plaintiffs’ motion for preliminary injunction.

DATED this 2nd day of August, 2024.

By: /s/ Nadia H. Dahab

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